

**Department of State Health Services
Agenda Item for State Health Services Council
January 30-31, 2008**

Agenda Item Title: Amend 25 TAC, §§169.41 – 169.48, Rules Relating to the Care of Animals by Circuses, Carnivals, and Zoos

Agenda Number: 4h

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background:

Zoonosis Control Branch (ZCB) is within the Infectious Disease Control Unit of the Community Preparedness Section of the Division for Prevention and Preparedness Services. ZCB is tasked with administering the rules concerning care of animals by circuses, carnivals, and zoos to promote humane conditions for and handling of these animals as well as the promotion of public health and safety. ZCB is to license and inspect entities subject to the rule. The statute provides for collection of licensing fees to support administration of the chapter. Due to range of exemptions listed in the chapter, this agency has not issued a license during the 26 years the program has been in existence.

Summary:

These rules establish standards regarding the care of animals in circuses, carnivals, and zoos that promote humane conditions for these animals and public health and safety in accordance with Texas Occupations Code, Chapter 2152.

The proposed amendments to the rules concern the standards for facilities for housing, transportation, food and water requirements, care in transit, operating licenses, and state inspection agents of animals in circuses, carnivals and zoos. These amendments also update legacy agency names, add a statutory citation, and revise and clarify rule text. The amendments to the rules comply with the four-year review of agency rules in Government Code, §2001.039.

Summary of Input from Stakeholder Groups:

Stakeholder input for these rules was obtained through phone calls and emails from the Texas Animal Control Association, Southwest Texas Animal Care and Control Association, Texas Humane Legislative Network, Texas Federation of Humane Societies, Texas Municipal League, Texas Veterinary Medical Association, United States Department of Agriculture – Animal and Plant Health Inspection Service, and statewide department Zoonosis Control staff. Stakeholder response was favorable and suggested no changes to the rules as proposed.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #4h.

Agenda Item Approved by Assistant Commissioner/Director: Casey Blass **Date:** 12/19/07

Person Presenting: Tom Sidwa, DVM **Program:** Zoonosis Control Branch **Phone No:** 458-7111 ext. 6628

Final CAM Approved by Consumer Affairs: RMM **Date:** 12/19/07

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 169. Zoonosis Control
Subchapter B. Care of Animals by Circuses, Carnivals, and Zoos
Amendments §§169.41 – 169.48

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§169.41 - 169.48, concerning the care of animals by circuses, carnivals, and zoos.

BACKGROUND AND PURPOSE

These rules are necessary to comply with Occupations Code, Chapter 2152, (formerly Health and Safety Code, Chapter 824), "Regulation of Circuses, Carnivals, and Zoos," §2152.051.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 169.41 - 169.48 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are mandated.

Specifically, the sections cover purpose, definitions, facilities for housing the animals, transportation of animals, food and water requirements, care in transit, licenses, and state inspection agents.

After carefully considering the alternatives, the department believes the rules as amended are the best method of implementing the statute to protect the public health with rules for the care of animals by circuses, carnivals, and zoos in the State of Texas.

SECTION-BY-SECTION SUMMARY

The amendments to §169.41 - 169.48 modify the language to make it more concise, update the definitions, add a statutory citation, revise the legacy agency names and department areas, and replace "director" with "manager" for the Zoonosis Control Branch.

The proposed revisions to the sections update and clarify language to enable those subject to the sections to more readily comply. The amendments promote humane conditions for these animals and promote public health and safety.

FISCAL NOTE

Martha McGlothlin, Section Director, Community Preparedness Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal

implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. McGlothlin has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the amendments to these sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. McGlothlin has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of clarifying language in the sections will be to promote humane conditions for animals and public health and safety.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, Department of State Health Services, Community Preparedness Section, Zoonosis Control Branch, MC 1956, P. O. Box 149347, Austin, Texas 78714-9347, or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services Deputy General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, Chapter 2152, "Regulation of Circuses, Carnivals, and Zoos," §2152.051, which requires the adoption of rules to administer the chapter; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department. Review of the rules implements Government Code, §2001.039.

The proposed amendments affect Occupations Code, Chapter 2152; Government Code, Chapters 531 and 2001; and Health and Safety Code, Chapter 1001.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§169.41. Purpose.

The purpose of these rules is to establish standards regarding the care of animals in circuses, carnivals, and zoos that **[which]** will promote humane conditions for these animals and public health and safety.

§169.42. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

[(2) Board – Texas Board of Health.]

[(3) Commissioner – Commissioner of the Texas Department of Health.]

[(2) [(4)] Department – Department of State Health Services [Texas Department of Health (TDH)].

[(3) [(5)] Housing facility – Any room, building, or area used to contain a primary enclosure or enclosures.

[(4) [(6)] Primary enclosure – Any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, or hutch.

[(5) [(7)] Sanitize - To make physically clean and to destroy disease-producing organisms.

[(6) [(8)] Zoonosis Control Branch (ZCB) [Zoonosis Control Division (ZCD)] – Branch [Division] of the Department of State Health Services [Texas Department of Health] to which the responsibility for administering [implementing] these rules is assigned.

§169.43. Facilities for Housing the Animals.

(a) Housing facilities shall:

(1) (No change.)

(2) have reliable and adequate electric power, if required to comply with other provisions of this subsection, and have adequate potable water [**shall be**] available;

(3) – (5) (No change.)

(b) Indoor facilities shall:

(1) (No change.)

(2) be adequately ventilated to provide for the health and comfort of the animals at all times by providing fresh air either by means of windows, doors, vents, or air conditioning[;] and be ventilated so as to minimize drafts, odors, and moisture condensation;

(3) – (5) (No change.)

(c) Outdoor holding facilities shall:

(1) – (2) (No change.)

(3) be constructed in such a manner that they will protect the animals [**animal**];

(4) – (5) (No change.)

(d) Primary enclosures shall:

(1) – (2) (No change.)

(3) enable each [**the**] animal to remain dry and clean;

(4) be constructed so as to protect the [**animal's**] body and extremities of every animal from injury; and

(5) (No change.)

(e) Feeding shall:

(1) be at least once a day except as otherwise directed by a licensed veterinarian, as defined in the Texas Health and Safety Code, §826.002, and with food free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal daily requirements for the condition and size of the animal(s); and

(2) be in food receptacles accessible to each animal and located so as to minimize contamination by excreta.

(A) - (B) (No change.)

(C) Self feeders may be used for feeding dry foods to animals acclimated to their use, but they must be kept clean and sanitary to prevent molding, deterioration, or caking of feed.

(f) - (i) (No change.)

§169.44. Transportation of Animals.

(a) Primary enclosure construction. All compartments, transport cages, cartons, or crates shall be constructed such that:

(1) structural strength and size are sufficient to contain the live animal(s) **[animals]** and to withstand the normal rigors of transportation.

(2) – (6) (No change.)

(7) the size is adequate to allow each **[the]** animal to turn about freely and to make normal postural adjustments, except when restriction of movement is essential to prevent danger to any **[the]** animals, handlers, or other persons; and

(8) (No change.)

(b) Transportation in primary enclosures. Primary enclosures used to transport live animal(s) **[animals]** shall:

(1) – (3) (No change.)

(c) Primary conveyances. The animal cargo space of primary conveyances transporting live animals shall:

(1) be designed and constructed to protect the health[,] and ensure the safety and comfort of the live animals contained therein at all times;

(2) – (6) (No change.)

§169.45. Food and Water Requirements in Transit.

(a) Each live animal shall be fed a sufficient quantity of food at least once in each 24-hour period unless there are special instructions given by a licensed veterinarian. The food shall be free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal requirements for the condition and size of the animal **[animal(s)]**.

(b) Potable water shall be provided to each animal at all times or at least twice daily for periods of not less than one hour, except as directed by a licensed veterinarian.

§169.46. Care in Transit.

The carrier, driver, or other employee shall be responsible to:

(1) – (4) (No change.)

(5) provide protection to live animals, allowing them to remain dry during any form of precipitation **[rain or snow]**.

§169.47. Licenses.

(a) Types.

(1) A regular operating license is issued for a period of two years from date of issue or such lesser period as the Executive Commissioner of the Health and Human Services Commission **[board]** shall deem appropriate for circuses or animal variety shows which are not resident in Texas and which are not exempt by law.

(2) A temporary operating license may be **[is]** issued and is valid until a regular license is issued or unless the temporary license is revoked for cause and is valid for two years from the date of application or until approval or denial of a regular operating license.

(b) – (c) (No change.)

(d) Information. Application, renewal forms, and/or information may be obtained by contacting Texas Department of State Health Services, Zoonosis Control Branch **[Texas Department of Health, Zoonosis Control Division]**, 1100 West 49th Street, Austin, Texas 78756.

(e) Fees. The following fees shall accompany each application for an operating license and/or renewal of a license:

(1) 1 animal to 25 animals-\$400;

(2) – (4) (No change.)

(f) (No change.)

(g) Any facility that does not meet required standards will not be licensed by the department **[TDH]**.

§169.48. State Inspection Agents.

Each agent inspecting circuses, carnivals, or zoos under Occupations Code, Chapter 2152, will be approved by the manager, Zoonosis Control Branch **[director, Zoonosis Control Division]**.